

**City of Taylorsville**  
**Planning Commission Meeting Minutes**  
**Jan 22, 2019**  
**Regular Session – 6:00 p.m.**  
**2600 West Taylorsville Blvd – Council Chambers**

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**Attendance:**


**Planning Commission**

Lynette Wendel – Chair  
John Warnas – Vice Chair  
Anna Barbieri  
Justin Peterson  
Don Quigley  
Kent Burggraaf  
Mark McElreath (Excused)  
Rebecca Scholes (Alternate)



**Community Development Staff**

Mark McGrath – Director of Community Development  
Angela Price – Associate Planner  
Amanda Roman – Associate Planner  
Stephanie Shelman – Deputy City Attorney  
Jean Gallegos – Admin Assistant/Recorder


**PRESENT:** Ernest Burgess

 6:07 PM **Mr. McGrath** introduced the items saying that everyone is familiar with the term “reasonable accommodation” which is a term in the Code that addresses residential facilities for the elderly and for people with disabilities. Basically, it is an exception from normal zoning standards to accommodate specific disabilities. This is largely driven by both the Federal and State Fair Housing Acts and addresses sometimes controversial segments of land use regulations. Staff has reviewed the Code recently and wondered if it was completely up to date with current standards of the Fair Housing Act and have decided to look at the Code definitively. Given the complexity of the Fair Housing Act, it was decided to bring in what staff feels to be the foremost expert in land use law here in the State of Utah regarding the Fair Housing Act, which is Jody Burnett, who is here tonight to address these issues with the Commission. He turned the time over to Mr. Burnett for his presentation.

**DISCUSSION ITEMS**

1. **Mr. Jody Burnett** gave a presentation regarding residential facilities for elderly persons or persons with a disability, and reasonable accommodations.  6:09 PM He said the most challenging issue is application of the Fair Housing Act, which has been around for a long time and applies to private housing as well as governmental entities. In this particular context, in 1988 Congress amended the act to include persons recovering from addiction from drugs or alcohol as disabled which extended protection against discrimination to that particular category of disability. In the beginning, his first cases were when the State was under pressure at the expense of losing Federal funding about discharging people from the State Hospital who were capable of living on their own, at least with supervision and getting them into the least restrictive environment to function. That in the last ten years almost all his cases have been regarding residential facilities for the elderly or people with disabilities. These are described Federally as group homes, congregate living arrangements by people who are recovering from addiction to drugs or alcohol. What the Fair Housing Act does in its simplest form is prohibit anybody from discriminating from a protected class on the basis of disability. It may be seen in large apartment complexes where there is discrimination against families, etc. There are ways to get in trouble under the Fair Housing Act: One is if you do something that demonstrates an intentional discriminatory intent, such as a really bad ordinance which didn’t allow residential facilities for people with disabilities at all in residential zones for instance, that would be intentional discrimination. Although the Land Use regulation may be factually neutral  6:18 PM if it has a district impact on a protected class, that can create trouble. He has rarely seen that happen in his practice. That almost always


what he deals with are requests for reasonable accommodations. What the Act provides is that even if there is an otherwise reasonable content neutral based regulation which doesn't screen out space and doesn't result in a desperate impact, there is still the obligation to grant a request for reasonable accommodation if it is adequately supported to show it to be both reasonable and necessary. If that showing is made, the burden shifts to his organization to show one of two things – in order to deny it at that point it must be shown that it either fundamentally alters the character of the zoning scheme or imposes an undue financial burden in terms of police enforcement, etc. An impacted neighbor is always going to perceive that having a facility of that nature would fundamentally alter the character of the zoning scheme. The reality of the standard is that is a way higher burden than that suggests because any of other typical issues such as parking is low impact. They must be thought of as a dwelling unit and the parking could be regulated as long as it is done even handedly across the board, treating all adjoining neighbors in the same regard and the applicants cannot be singled out. He gave an illustration of that by saying in Orem City probably 30 years ago, there were four adult males with a history of sexual misbehavior, living in a home and the contract obtained by the owner of the residence was the State Hospital. The public hearing was very contentious, and the request was granted, the requesting organization was subsequently sued and lost because it imposed conditions that at that time were verbatim from the State Code, which included a neighborhood advisory committee, which ended up being four BYU students. The State Code at the time actually on its face was contrary to the Fair Housing Act, which was another reason for the loss. The point is this is unlike any other land use decision would be made and damage fees for losses are very high. Now, most cities have heard enough about this and know these facilities are a permitted use in any residential zone. Most jurisdictions do have a limit on the number of unrelated persons to meet the definition of family. In Taylorsville it is four or fewer individuals can live together and don't need any other authorization from the City to do so.


**Mr. Burnett** added that State and Federal regulations trump local ordinances. He outlined the types of facilities as being: (1) Active residential treatment program. (2) Sober living facilities. (completed active treatment program – effective recovery is enhanced by a sober living facility. Poses challenges because it is not a business. (3) By statute this one is called recovery residence (new). The legislature was urged to regulate this type of agency to provide a safer environment center. **Mr. Burnett** said there needs to be some type of land use and recommended granting these reasonable accommodations but to make opening of the business contingent on obtaining a license.  6:22 PM He felt a better action was to avoid holding a public hearing if possible because these are permitted uses and local land uses can violate this law. The point is to reintroduce them into normal residential life, so not to place them in commercial zone areas. He recommended local government offices interface with State agencies to assure compliance.

**Commissioner Quigley** stated that the new Bus Rapid Transit system will positively affect this use, to allow clients to be more self-sufficient.

**Mr. McGrath** advised there will be more discussion at Staff level, who will bring a recommendation to the City Council in the future.



2. Discussion Regarding Class D Home Occupation Daycare Standards. (Taylorsville Municipal Code 13.11.030).


Ms. Price said that Staff is  6:48 PM constantly looking at the Code to make it better. That the Class D Home Occupancy Day Care has been a struggle for Staff level. Are CUP, governed by Stats Statute. That Staff wanted to hold an informal discussion tonight about the process. She felt there was not enough substance included in the present ordinance. Staff would like to move it from the land use code to solely under the business license code. At that junction, add more teeth such as requiring a formal inspection with each request to assure all codes are met. Under the business license function there would be no public clamor, which cannot be a consideration anyway. There could also be added a probationary period to assure compliance with all State codes.


**Commissioner Quigley** wanted to know where the fire marshal gets involved and was informed it is under the business license process and does not get involved with the land use issues.  7:17 PM **Ms. Price** said the City doesn't grant the license until the State has made their inspection.


**Mr. McGrath** said the only intent tonight was to bring this forward as becoming a potential problem and will bring this back as an ordinance at a later date. **Ms. Price** said Staff would contact other cities and determine what their issues are, if any, and see if any are relevant to Taylorsville.

#### **BUSINESS ITEMS**

- 3.1 **Election of Chairman and Vice Chairman of the Planning Commission for 2019.** **Commissioner Warnas** advised that his family has sold their home and they would be moving to another City in about a month. **Commissioner Quigley** suggested that the Commission vote for Commissioner Barbieri for Chairman by acclamation. **Commissioner Warnas** submitted Commissioner Peterson's name to be approved by acclamation likewise for the Vice Chairman position.  7:52 PM  
**MOTION:** A subsequent roll call vote revealed all Commissioners present were in favor and election results stand as stated.  7:52 PM **Commissioner McElreath** was absence.

- 3.2 Regarding Book Club meetings, **Mr. McGrath** advised he has received no word from Millcreek City as to their intention to join the Taylorsville Planning Commission in a session.  7:53 PM

- 3.2 **Commissioner Quigley** gave his report on the City Council Meeting.  7:55 PM

**ADJOURNMENT:** By motion of Commissioner Quigley, the meeting was adjourned at 08:00 p.m.  **8:02 PM**

Respectfully Submitted by:

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Jean Gallegos, Admin Assistant/Recorder for the  
Taylorsville City Planning Commission